SHER TREMONTE LLP

September 20, 2016

VIA ECF

The Honorable P. Kevin Castel
United States District Judge
United States District Court for the Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, NY 10007

Re: *United States v. Gary Hirst*, 15 Cr. 643(PKC)

Dear Judge Castel:

We write to the Court on behalf of our client, Gary Hirst, to respectfully request that the Court (1) strike the testimony of Gavin Hamels; (2) strike the testimony of Nazan Akdeniz; and (3) give the jury a curative instruction regarding its role in evaluating the weight of the metadata evidence.

The Court should strike the testimony of Gavin Hamels, because such testimony made clear that Hamels entered a separate conspiracy with Jason and Jared Galanis from any conspiracy that the evidence at trial could plausibly suggest involved Mr. Hirst. As such, all statements testified to by Mr. Hamels are not statements in furtherance of the conspiracy. *See In re Terrorist Bombings of U.S. Embassies in E. Africa*, 552 F.3d 93, 139 (2d Cir. 2009) (Rule 801(d)(2) "requires that both the declarant and the party against whom the statement is being offered be members of *the* conspiracy" (emphasis added)). As the Court knows, to admit a statement by a coconspirator in furtherance of the conspiracy, a district court must find by a preponderance of the evidence that (1) a conspiracy existed and included the declarant and the defendant; and (2) that the statement was made during the course and in furtherance of the conspiracy. *See United States v. Orena*, 32 F.3d 704, 711 (2d Cir. 1994). Importantly, "there must be some independent corroborating evidence of the defendant's participation in the conspiracy." *United States v. Tellier*, 83 F.3d 578, 580 (2d Cir. 1996). Here there is no such corroborating testimony or evidence and the acts and statements described in Mr. Hamels's testimony consisted of irrelevant and prejudicial hearsay. We respectfully request that it be stricken in its entirety.[1]

[1] We anticipate that much of the testimony of Paul Hinton tomorrow will similarly relate to match trading, which the proof offered thus far has not established was a reasonably foreseeable part of the scheme that it alleges Mr. Hirst entered.

80 BROAD STREET, SUITE 1301 | NEW YORK, NEW YORK 10004
WWW.SHERTREMONTE.COM | TEL: 212-202-2600 | FAX: 212-202-4156

The Court should also strike the testimony of Nazan Akdeniz, because it consisted largely of speculation about legal requirements that Ms. Akdeniz had no personal knowledge about or basis from which to testify. Further, the government elicited testimony through Ms. Akdeniz – as it has done through other witnesses – that the Shahini Reg S shares were "freely tradable." The government well knows that Reg S prohibits such shares to be sold in the US market; yet the government did nothing to correct the false testimony it elicited from Ms. Akdeniz. Her testimony should be stricken in whole.

Finally, we respectfully request that the Court give the following curative instruction[2] regarding Stephen Flatley's testimony that the FBI does not rely on metadata alone in determining the creation date of a document:

> Ladies and Gentlemen of the jury, testimony was given yesterday regarding the standard that the FBI uses for assessing certain computer forensic evidence. I instruct you, as I will instruct at the end of this trial, that you are the sole judges of the facts and you decide the weight of the evidence.

As discussed in our letter of September 19, 2016, in the absence of such a curative instruction, Mr. Flatley's testimony will improperly usurp the role of the jury.

Respectfully submitted,

/s/ *Michael Tremonte*

Michael Tremonte
Justine A. Harris
Noam Biale
SHER TREMONTE LLP
80 Broad Street, 13th Floor
New York, NY 10004
Tel: (212) 202-2600
Fax: (212) 202-4156
Email: mtremonte@shertremonte.com

cc: AUSA Brian Blais (via ECF)
AUSA Rebecca Mermelstein (via ECF)
AUSA Aimee Hector (via ECF)

---

[2] Adapted from an instruction given by Judge Sweet in *United States v. Guerrero*, 882 F. Supp. 2d 463, 481 (S.D.N.Y. 2011).